

COURT NO. 1  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA 1675/2020

Air Cmde Raghvendra Kumar Tripathi (Retd) ... Applicant  
Versus  
Union of India & Ors. ... Respondents

For Applicant : Mr. Baljeet Singh, Advocate  
For Respondents : Mr. Rajeev Kumar, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction under Section 14 of the Armed Forces Tribunal Act, 2007, the instant OA has been filed praying for the following prayers :-

*“(a) To set aside the impugned letter NO. Air HQ/99797/4340/Dis/O/DAV-1(B) dated 08.06.2020 passed by the respondents.*

*(b) To direct the respondents to grant disability element of pension @40% with effect from the date of retirement for life by treating the disabilities of the applicant as attributable to and aggravated by the Air Force Service.*

*(c) To direct the respondents to grant the benefit of rounding off to disability element of pension of the applicant @50% (40% to be rounded off to 50% with effect from date of retirement with all consequential benefits.*

*(d) To direct the respondents to pay the due arrears of disability pension with interest @12% p.a. with effect from the date of retirement till actual payment.*

2. The factual matrix of the case is that the applicant was commissioned into Indian Air Force on 16.02.1987 and discharged from service on 31.01.2020 after about 32 years 11 months and 16 days of qualifying service. During

the Release Medical Board conducted prior to his retirement, he was found to be suffering from the disability, namely, ID (i) CAD STEAWMI SVD-POST PCI to LAD DES @ 30% and (ii) Pre-diabetes @15-19% for life. The composite assessment for both the disabilities has been recorded @40% for life and his medical category was permanently downgraded to A4G3(P) for the said disabilities, while his disability was held to be Not Attributable Nor Aggravated (NANA). During the course of hearing, learned counsel for the applicant made a fair statement that in this application, the applicant would only be praying for disability pension pertaining to one ailment i.e. CAD STEAWMI SVD-POST PCI to LAD DES and he gives up his claim for all other ailments. The applicant submits that for the purpose of CAD STEAWMI SVD-POST PCI to LAD DES, the disability has been assessed @ 30% as is evident from the medical records.

3. The initial claim of the applicant for the disability element of pension was rejected by the respondents vide their letter No. Air HQ/99797/4340/Dis/O/DAV-1(B) dated 05.12.2019. Against the said rejection, the applicant preferred a Legal Notice/1<sup>st</sup> Appeal dated 7.03.2020 which was rejected by the respondents vide their letter

No. Hq/99797/4340/Dis/O/Dav-1(B) dated 08.06.2020.  
Aggrieved by the rejections, the applicant has approached  
this Tribunal.

#### CONTENTIONS OF THE PARTIES

4. Placing reliance on the judgement of the Hon'ble Supreme Court in Dharamvir Singh Vs. Union of India and Ors. [2013 (7) SCC 36], learned counsel for applicant argues that after thorough medical examination the applicant was commissioned into Air Force service and there was no note of any disability recorded in his service records. It is further contended that he served in the Air Force at various places in different environmental and service conditions in his prolonged service; therefore, any disability occurring during the period of his service is deemed to be attributable to or aggravated by Air Force service.

5. Per contra, learned counsel for the respondents submits that in terms of Para 47 Chap VI GMO 2002, amendment 2008 and vide Regulation 37 of the Pension Regulations for the Army, 2008 Part-I, the onset of the disability of the applicant was during his posting in peace area and also though the same has been assessed @ 30% for life it has been held "neither attributable to nor aggravated" by Air Force Service by the RMB and as such, his claim was

rejected; thus, the applicant is not entitled for grant of disability element of pension due to policy constraints.

### ANALYSIS

6. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the extent of disability was assessed to be above 20% which is the bare minimum for grant of disability element of pension in terms of Regulation 153 of the Pension Regulations for the Air Force, 1961 (Part-I). The only question that arises for consideration in the above backdrop, is whether disability suffered by the applicant was attributable to or aggravated by Military Service?

7. The issue of attributability of a disease is no longer *res integra* in view of the verdict of the Hon'ble Apex Court in *Dharamvir Singh* (supra), wherein, it is clearly spelt out that any disease contracted during service is presumed to be attributable to Military Service, if there is no record of any ailment at the time of commission into the Military Service.

8. Furthermore it cannot be overlooked that the onset of the disability was in May 2014; after commission of the applicant on 16.02.1987, i.e., after 27 years of service in the Indian Air Force and in the 12<sup>th</sup> posting of the applicant. The

cumulative stress and strain that the applicant would have undergone during this period of strenuous military service cannot be overlooked, especially as the medical case sheet qua the applicant does not bring forth any contributory factors from the side of the applicant.

9. Regarding broad banding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in Union of India Vs. Ram Avtar, (Civil Appeal No. 418 of 2012) and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India vide its letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18.04.2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

10. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of a medical disease/disability and the disability must be presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service.

## CONCLUSION

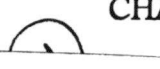
11. Therefore, in view of our analysis, the OA 1675/2020 is allowed and respondents are directed to grant the benefit of the disability element of pension @ 30% for life (for CAD STEAWMI SVD-POST PCI to LAD DES @ 30% for life), rounded off to 50% in view of the judgment of the Hon'ble Apex Court in Union of India Vs. Ram Avtar (supra) from the date of discharge, i.e., 31.01.2020.

12. The arrears shall be disbursed to the applicant within three months of receipt of the copy of this order failing which they shall earn interest @ 6% p.a. till the actual date of payment.

13. No order as to costs.

Pronounced in the open Court on 18 day of October, 2024.

  
[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

  
[LT GEN C. P. MOHANTY]  
MEMBER (A)

Ps